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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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1998 Biennial Regulatory Review -)
Review of International Common Carrier)
Regulations)
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IB Docket No. 98-118

**COMMENTS OF AT&T CORP. IN SUPPORT OF PETITION FOR
CLARIFICATION AND RECONSIDERATION FILED BY AIR TOUCH
COMMUNICATIONS, INC. AND BELL SOUTH CORPORATION**

AT&T Corp. ("AT&T") hereby submits its comments with respect to the
Petition for Clarification and Reconsideration filed in the above-captioned proceeding by
AirTouch Communications, Inc. and BellSouth Corporation (hereinafter referred to
collectively as "Petitioners").¹ AT&T supports Petitioners' request to clarify that new
Section 63.21(i) should not be construed as rescinding existing Section 214
authorizations obtained by certain categories of carriers prior to the effective date of the
rules adopted in IB Docket No. 98-118² and to reconsider Section 63.18(e)(3) by making
it consistent with Section 1.948(d) of the rules for wireless services.

¹ See *AirTouch Communications, Inc. and BellSouth Corporation Petition For Clarification and Reconsideration*, May 19, 1999.

² *In the Matter of 1998 Biennial Regulatory Review -- Review of International Common Carrier Regulations, Report and Order*, IB Docket No. 98-118, FCC 99-51, (rel. Mar. 23, 1999), 64 Fed. Reg. 19057 (Apr. 19, 1999) ("Report and Order").

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List A B C D E

I. PETITION FOR CLARIFICATION.

AT&T agrees with Petitioners that the express language of new Section 63.21(i) could be construed to invalidate blanket international Section 214 authorizations held by CMRS carriers on behalf of non-wholly-owned subsidiaries, affiliates and partnerships they control because the *Report and Order* was the first instance where such a policy had been announced and because the new policy is otherwise inconsistent with previously established informal policy and practice. Petitioners are also correct that invalidation of existing Section 214 authorizations based on Section 63.21(i) would be contrary to the Administrative Procedure Act ("APA").

As the Commission itself has recognized, "...settlements encouraged by the Commission during the initial phase of cellular licensing ... have resulted in the creation of certain partial, often passive ownership interests in cellular licensees...."³ Consequently, many CMRS licensees currently providing international service under a single Section 214 authorization are not 100% direct or indirect subsidiaries or affiliates of the carrier that holds the international Section 214 authorization.⁴ Accordingly, failure to issue the clarification sought by Petitioners would open a floodgate of international

³ *In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order*, GEN Docket No. 90-314, FCC 93-451, (rel Oct. 22, 1993) ("*Second Report and Order*"), ¶ 107.

⁴ For example, AT&T has approximately 70 different wireless subsidiaries and affiliates, less than 50 percent of which have 100% identical ownership. These licensees have been providing international service as concurring carriers in a 214 authorization granted to Continental Intercell, Inc. See *In the Matter of Continental Intercell, Inc., Application for Authority to Resell the Services of Other Common Carriers to Provide Switched Voice Service to Specific International Points, Order, Authorization and Certificate*, DA 91-431 (rel Apr. 9, 1991); *Applications of Craig O. McCaw, Transferor, and American Telephone and Telegraph Co., Transferee*, 9 FCC Rcd. 5836 (1994).

Section 214 applications which would result in an additional, unnecessary processing burden on the Commission staff at a time when resources are already stretched thin.

For the foregoing reasons, AT&T requests that at a minimum the Commission should issue the clarification requested by Petitioners that Section 63.21(i) will not be applied retroactively to blanket Section 214 authorizations issued prior to the effective date of the *Report and Order*. Specifically, the term “authorized carrier” in new Section 63.21(i) should be read to include all the entities encompassed by existing Section 214 authorizations, including non-wholly-owned subsidiaries and partnerships controlled by, or under common control with, the authorized carrier.

AT&T requests that the Commission go one step further by amending Section 63.21(i) for CMRS carriers by adopting a rule which would allow a CMRS carrier to provide international service on unaffiliated routes without first obtaining its own authorizations using the Section 214 authorization of an authorized carrier⁵ that directly or indirectly controls or is under common control with the prospective new entrant.

In the *Report and Order* the Commission refused to allow non-wholly owned direct or indirect subsidiaries to provide services under the international Section 214 authorization of another carrier due to its concern that it would not have the benefit of all ownership information for the prospective new entrant which is necessary for a national security, law enforcement, or foreign policy evaluation.⁶

⁵ An “authorized carrier” in this context is one that already has Section 214 authority to provide international service.

⁶ *Report and Order*, ¶ 47.

However, the Commission's concern about being able to monitor the ownership of a carrier engaged in the provision of international services can be satisfied by means other than requiring the filing of international Section 214 authorizations for entities with non-identical ownership. Section 63.21(i) specifically requires carriers taking advantage of the new procedures to provide certain information to the Commission within 30 days after the carrier begins providing international service under an already authorized carrier's 214. Thus, the Section 63.21(i) post-service initiation information submission requirement could be amended to require the filing CMRS carrier to submit relevant ownership information to enable the Commission to evaluate issues related to national security, law enforcement or foreign policy.⁷ Alternatively, since CMRS carriers in auctionable services are already required to submit ownership information on FCC Form 602, the Commission could obtain the desired ownership information from a CMRS carrier's 602 Form.

The changes proposed above are also consistent with the treatment given to pro forma transfers of control of international Section 214 authorizations. Section 63.24 expressly allows a carrier who holds an international Section 214 authorization to consummate a pro forma transfer of control without seeking prior approval from the Commission and without even notifying the Commission that minor, insubstantial ownership changes have been made. Specifically, Sections 63.24(a)(5) and (a)(6) allow a carrier providing international services to make certain non-substantial ownership changes without seeking prior Commission approval based on the premise that the

⁷ Like many rules, a CMRS carrier's authorization to provide international service under the new rule could be conditioned on the carrier in question ceasing international operations upon notice from the Commission.

interests being transferred or assigned are not “controlling” interests. If certain non-controlling ownership changes can be made subsequent to receipt of authority to provide international service, then CMRS carriers should be allowed to initiate international service on unaffiliated routes by using the Section 214 authorization of an existing carrier as long as the already authorized carrier controls or is under common control with the new entrant.

II. PETITION FOR RECONSIDERATION.

AT&T supports Petitioners’ request that the Commission conform Section 63.18(e)(3) to Section 1.948(d) to make the international 214 rules relative to notification of the consummation of a non-pro forma transfer or assignment, consistent with rules for wireless carriers. Such a change would serve the public interest by promoting regulatory consistency.

CONCLUSION

For the foregoing reasons, the Commission should issue the requested clarification and reconsideration.

Respectfully submitted,

AT&T Corp.

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June 25, 1999

CERTIFICATE OF SERVICE

I, Margaret Brue, do hereby certify that on this 25th day of June, 1999, a copy of the foregoing "Comments of AT&T Corp. in Support of Petition for Clarification and Reconsideration filed by AirTouch Communications, Inc. and BellSouth Corporation" was mailed by U.S. first class mail, postage prepaid, to the following parties:

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